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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND RULES  
4.2, 6.1, 6.5, 6.6, 7.2 AND 7.4,  
ARIZONA RULES OF CRIMINAL  
PROCEDURE**

Supreme Court No. R-21-0022

**COMMENT OF  
THE ARIZONA PROSECUTING  
ATTORNEYS' ADVISORY  
COUNCIL**

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") appreciates the supplemental Petition attempt to address concerns raised in our initial comment. However, most of APAAC's concerns remain and some new concerns exist in light of the Supplemental Petition. We refer both to our original comment, as well as to the concerns expressed herein.

First, the Petition's proposal to lessen the burden of the increased number of misdemeanor bail review hearings on defense representation by utilizing legal paraprofessionals (LPs) is problematic. Arizona Supreme Court Rule 31.3(e)(4) permits LPs to perform services in compliance with the Arizona Code of Judicial Administration. Regarding limited jurisdiction criminal courts, ACJC

1 §7-210(F)(2)(c) restricts LPs to, “authorized services in criminal misdemeanor  
2 matters before a municipal or justice court of this state where, upon conviction, a  
3 penalty of conviction is not at issue ...” Authorized services in this context allow a  
4 LP to:  
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6           Appear before a court or tribunal on behalf of a party,  
7           including mediation, arbitration, and settlement  
8           conferences where not prohibited by the rules and  
9           procedures of the forum.

10 ACJC § 7-210(F)(1). However, under the Petition, a defendant “would be afforded  
11 the opportunity to cross-examine and call witnesses and to present other evidence  
12 regarding reasonable and necessary conditions of release.” Petition at 5. In other  
13 words, the defense responsibilities at bail review hearings under the Petition  
14 exceed the limited scope of work which LPs are permitted.  
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16           Additionally, the language of the Supplemental Petition’s proposed Rule  
17 7.2(a)(2) creates an impossible standard. The new proposal states that a defendant  
18 must be released unless the court determines additional conditions are “reasonable  
19 and necessary.” The original Petition used only the word “necessary.” The  
20 addition of the words “reasonable and” in front of “necessary” does not alleviate  
21 the concern raised in APAAC’s original comment. How does the court ever have  
22 an assurance that a bond is “necessary” much less “reasonable and necessary?”  
23 The petitioner apparently copied this language from proposed Rule 7.4 regarding  
24  
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1 the State's burden of proof. Proposed Rule 7.4(b)(2) states that in order to contest  
2 release, the State must prove the bond is "reasonable and necessary." Again, how  
3 can the State ever prove that something is "necessary" much less both "reasonable"  
4 AND "necessary?" It is unknown why these particular words were chosen.

6 Arizona Revised Statute §13-3967 provides guidance on the pre-trial release  
7 of defendants. Section 13-3967 (D)(6) states that a court may impose conditions  
8 deemed "reasonably necessary." The term "reasonably necessary" is vastly  
9 different than "reasonable and necessary." By using "reasonably" in conjunction  
10 with "necessary" the statute does not require the court to find the absolute and  
11 impossible "necessary" but instead interjects a realistic qualifier, expecting the  
12 court to use reason in that determination. Neither the court nor the State are able to  
13 predict the future to know whether anything is "necessary." Should the court adopt  
14 the provisions in the Petition and Supplemental Petition, certainly a more realist  
15 choice of words should be applied to the standard of review imposed on the court  
16 in 7.2 and the State in 7.4 and that standard should be consistent with existing AZ  
17 law. Therefore, if these petitions proceed, APAAC asks that the terms "reasonable  
18 and necessary" be eliminated and the term "reasonably necessary" used instead.

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1 RESPECTFULLY SUBMITTED this 23rd day of June, 2021.

2 Elizabeth Burton Ortiz

3 Elizabeth Burton Ortiz, #012838

4 Executive Director

5 Arizona Prosecuting Attorneys'

6 Advisory Council

7 Electronic copy filed with the  
8 Clerk of the Arizona Supreme Court  
9 this 23rd day of June, 2021, by:

10 By: Tiana Cooney